

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

TRACY SCAIFE,	)	CASE NO. 1:15-cv-00388
	)	
Plaintiff,	)	JUDGE PATRICIA A GAUGHAN
	)	
v.	)	<b><u>DEFENDANT MARK LIBERTIN,</u></b>
	)	<b><u>M.D.'S MOTION TO DISMISS</u></b>
LAKEWOOD HOSPITAL, et al.,	)	<b><u>PLAINTIFF'S COMPLAINT</u></b>
	)	
Defendants.	)	

Defendant Mark Libertin, M.D., by and through counsel, hereby moves this Court under F.R.C.P. Rule 12(b)(6) to dismiss Plaintiff's Complaint for the failure to state a claim. Plaintiff's Complaint against Dr. Libertin is based upon alleged violations of 42 U.S.C. §1395dd, *et seq.*, the Emergency Medical Treatment and Active Labor Act, commonly referred to as EMTALA. However, the civil enforcement provision of EMTALA, which is set forth in 42 U.S.C. §1395dd(D)(2), does not vest private litigants with a cause of action against physicians. Dr. Libertin is a physician, and therefore, construing all material allegations in Plaintiff's favor, there is no issue to be tried. Plaintiff cannot state a cause of action under EMTALA against Dr. Libertin. In fact, Plaintiff herself acknowledged as much in her Brief in Opposition to the Motion to Dismiss filed by Defendants Cleveland Clinic Foundation and Cleveland Clinic Regional Physicians, LLC. Dr. Libertin, therefore, is entitled to judgment in his favor as a matter of law.

Dr. Libertain's response to Plaintiff's Complaint is due by July 6, 2015. Counsel for Dr. Libertain asked Plaintiff's Counsel to voluntarily dismiss Dr. Libertain, and indeed, thought such a dismissal would be forthcoming. To date, there has not been any dismissal filed. Accordingly, this Motion to Dismiss is required both to preserve the defense and to protect against a possible default judgment. That said, the statutory basis for this Motion, the relevant case law and the supporting legal argument are fully set forth in the Motion to Dismiss filed by Defendants Cleveland Clinic Foundation and Cleveland Clinic Regional Physicians, LLC, and Dr. Libertain hereby incorporates by reference the law, legal reasoning and analysis set forth in that Motion as if fully rewritten herein.

Respectfully submitted,

/s/ Jane F. Warner

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*Attorneys for Defendants The Cleveland Clinic  
Foundation and Cleveland Clinic Regional  
Physicians, LLC and Mark Libertain, M.D.*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2015, a copy of the foregoing *Defendant Mark Libertain, M.D.'s Motion to Dismiss Plaintiff's Complaint* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Jane F. Warner*

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*One of the Attorneys for Defendants*

*The Cleveland Clinic Foundation and Cleveland  
Clinic Regional Physicians, LLC*

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